



PolicyBrief

Community Supervision in Wisconsin

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Key Points

- Length of time on parole adds costs to our criminal justice system with no benefit to safety.
- Conditions of release include standard rules that often are not related to the underlying offense.
- Revocation of extended supervision results in a total sentence longer than ordered by the court.
- Probation holds are disruptive and are not independently reviewed by anyone outside of the Department of Corrections.
- An absence of a clear policy related to crimeless violations of conditions can create uneven results.

Current Conditions

Community supervision takes three forms. Probation is available for anyone convicted of a crime that does not carry a mandatory prison sentence. Parole and extended supervision are forms of supervision that follow a prison sentence. For the most part,¹ parole applies to cases charged prior to the implementation of truth-in-sentencing in 2000 ([1997 Wisconsin Act 283](#)). Extended supervision is applied as part of the bifurcated sentences mandated by truth-in-sentencing. There are approximately 65,600 people in all three programs; approximately two-thirds of them are on probation ([WI DOC 2019a](#)).

The differences between the types of community supervision are only apparent in the event of a revocation of the supervision. In cases of probation, a revocation means a person is returned to the original court and faces up to the maximum possible sentence for the original charges. In the cases involving felonies, the sentences imposed can include a prison sentence with a term of extended supervision. The sentencing decision is based upon the conduct in the original case.² However, courts can take into consideration the conduct that caused the revocation. In cases of extended supervision and parole, the amount of time spent in person is determined by an administrative law judge.

All three types of community supervision are subject to the same 18 standard conditions ([WI DOC 2019b](#)). If the offense is a qualified sex offense or the supervisee has ever been convicted of a qualified sex offense, there are six additional standard rules of supervision that apply. In addition to the standard rules, the sentencing court and the probation/parole officer may add conditions.

Challenges

Length of Post-Prison Supervision

Wisconsin is third in the nation for the amount of time imposed by post-prison sentences despite the fact that re-offense rates plummet after a three-year period ([Williams et. al., 7-8](#)). Truth-in-sentencing mandates the sentencing court to determine the entirety of a person's sentence and to bifurcate the sentence to set the amount of time to be spent in custody (initial confinement) and the time to be spent on community supervision (extended supervision). There is no mechanism to reduce the amount of time. The amount of time available is tied to the class of felony. A common practice for judges is to equalize the initial confinement time with the extended supervision time. For example, a sentence of five years of initial confinement and five years of extended supervision is common.

The average amount of time spent on supervision post-prison is likely to increase over the next several years. First, there are programs that prisoners can partake in

¹ In some cases, a post-truth-in-sentencing sentence can be eligible for parole. For example, a county jail sentence ordered to be consecutive to a prison sentence is subject to parole. For the purposes of this paper, those examples will not be directly addressed.

² Courts in Wisconsin have the option of imposing and staying a sentence subject to probation, but this is rarely used. In those instances, a revocation means the stayed sentence would be implemented.

that can reduce their initial confinement sentence. However, the remaining balance of the initial confinement would be converted to extended supervision. For example, a sentence of three years of initial confinement and three years of extended supervision with a program completion two years into the initial confinement period would change the extended supervision sentence to four years. There has been a growing backlog of prisoners eligible for programs. Increased funding from the Legislature is allowing an increase of programming, thereby increasing the amount of time spent on extended supervision ([LFB, 212-3](#)). Second, for the last eight years, the rate of granted parole applications has dropped ([Hall](#)). The new administration has promised (but not actually implemented) a more open approach to parole. Because parole only applies to pre-2000 sentences upon 25 percent of completion, if paroles are granted again, there would be substantial periods of parole that would not otherwise exist if they were held in custody until their mandatory parole date.

Flexibility of Conditions

The large number of standard conditions can create stumbling blocks to successful completion of supervision that are completely unrelated to the underlying conviction ([WI DOC 331.03](#), [WI HA 2.05](#)). For example, a standard rule requires pre-approval of your supervision agent prior to purchasing anything on credit. It is difficult to rationalize how community safety is ensured by a person with a low-level drug possession charge checking with their probation agent before buying groceries. Because any violation of any condition can be the basis for revocation proceedings, greater autonomy in determining conditions of supervision rests in the hands of individual agents.

Calculating Revocation of Extended Supervision Time

An unusual feature of extended supervision is the lack of credit granted for “street time” ([Wis. Stat. 302.113\(9\)\(am\)](#)).

For example, if a person’s sentence includes ten years of extended supervision and violates supervision in year one or year nine, the maximum possible time available for re-confinement is ten years. The result is a risk of spending a substantially lengthier period of time in either confinement or extended supervision than the sentence imposed by the court.

Holds

A probation/parole agent has the authority to detain a supervisee upon suspicion of any violation of supervision ([WI DOC 331.05\(7\)](#)). A person on a hold has no right to bail during the pendency of the revocation process except in extremely rare situations. The result of a hold is a major disruption in the supervisee’s life. Work release is only permitted in limited situations, which means a hold often results in job loss. Like any type of pre-adjudication incarceration, the legal proceedings are often clouded by the strong desire to secure release.

Lack of Uniform Approach to Non-criminal Violations of Supervision

Many jurisdictions, like Texas and Louisiana, have authorized the use of clear guidelines on sanctions for non-criminal violations of supervision ([Bott, et al., 8](#)). Wisconsin has not taken such an approach. Great discretion is granted to the individual probation/parole agents to address any violation. In the event of any violation, an agent can issue sanctions ranging from verbal warnings and reconfiguring the conditions of supervision to imposing periods of incarceration ([WI DOC 331.03](#)). Despite the range of options, no formal guidance is provided within the statutes or the administrative code on how to address different types of violations. Studies have shown that clear punishments for specific violations with the help of incentives for complying with supervision have reduced instances of reoffending. ★

References

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ABOUT THE AUTHOR



Tom Lyons is the state director of Wisconsin for Right on Crime. After receiving an undergraduate degree from the University of Illinois and a law degree from Marquette University, Lyons entered the legal field. Working in offices in Kewaunee and Sheboygan counties, his practice focused primarily on criminal defense, juvenile, and mental health law. Switching to the world of policy, Lyons started as a legislative aide to a member of the Wisconsin State Assembly, later for a state senator, and for a brief time Gov. Scott Walker before joining Right on Crime in 2017.

About Right on Crime

Right on Crime is a national campaign of the Texas Public Policy Foundation, in partnership with the American Conservative Union Foundation and Prison Fellowship, which supports conservative solutions for reducing crime, restoring victims, reforming offenders, and lowering taxpayer costs. The movement was born in Texas in 2007, and in recent years, dozens of states such as Georgia, Ohio, Kentucky, Mississippi, Oklahoma, and Louisiana, have led the way in implementing conservative criminal justice reforms.

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